

Senator Wyden's Speech to the Section 230 Anniversary Conference
Friday, March 04, 2011

Remarks as Prepared for Delivery:

Thank you. I had hoped to be with you today but the Senate's schedule unfortunately made that impossible. But then again, maybe this is an anniversary best observed over Skype.

It has been 15 years since Section 230 of the Communications Decency Act became law. In those short 15 years the Internet has become such an ever-present part of our lives that I bet some can't even imagine living without it.

And Section 230 has become such a central part of the way we operate online that I bet few could conceive of what operating a web business, forum, news site or blog would be like without it.

Did we know it would turn out this way? Quite frankly, no. But 15 years ago, we made the judgment that if the Internet was going to realize its full potential, brick and mortar rules couldn't apply.

In the early days of personal computing we saw one "killer app" after another and consumers struggling to get just two computers to talk to each other, the concept of computers and people speaking to each other by way of standardized software and a common language was groundbreaking. It was too remarkable and held too much promise to hold back with taxation, regulation, and endless litigation.

At the time, both Chris Cox and I were Members of the House of Representatives. I don't want to embarrass any of my colleagues, but in the mid-90's much of the debate was defined by folks who were afraid of the new technology – they wanted to protect children from the scary Internet – Chris and I hit on an idea that we felt would enable these new networks to protect their users without making them magnets for lawsuits.

We recognized that limiting secondary liability on the Internet would allow companies like Prodigy, Compuserve, and America Online to keep smut away from kids without disrupting the network. It was our intention to protect the network effect from the smothering hand of government and litigation.

I believe it was that basic principle that Chris and I came up with -- of not holding intermediaries and service providers liable for the bits that moved over their servers and the actions of their users – that has made it possible for the Internet to grow in so many directions.

With the subsequent growth of “Web 2.0” and the explosion of user creation and contribution across the web, the Internet began to fulfill its’ true promise. Universities are making entire courses freely available to those who could never afford to attend an MIT, Stanford, or Princeton. The explosion of consumer information is transforming markets, improving products and lowering prices. Sites like Wikipedia and Facebook are creating new resources and ways of communicating that just decades ago only existed in science fiction.

Today the American and global economy is increasingly rooted in Internet technology. The Internet is becoming a central platform for commerce and a means by which people and societies organize. It is the shipping lane of the 21st century, the marketplace of ideas and a democratic town square inside even the most repressive of nations.

It was imperative in 1996 that the nascent Internet be protected from the interests of those that wanted to tax and control it. But now that we have seen the power and importance of the Internet -- protecting it is that much more imperative.

Just as Chris and I knew that taxation and litigation were real threats to the Net 15 years ago, there are some challenges ahead that I believe require us to join forces.

1 - *The war against the network* The Big Telco’s, which are increasingly providing content, are opposing virtually every effort to promote the interest of the network as a whole because they want the option to throttle and discriminate against one form of content versus another. We can’t let that happen.

Allowing the creation of walled gardens with captive users is a huge step backward from the network principles that made the Internet a true engine of creation. Allowing any Telco to prioritize and favor certain data compromises the power and efficiency of the network as a tool for commerce, education and communication. Again, we can’t let that happen.

Some argue that network regulations are not necessary – that they are a solution in search of a problem and that no one is pursuing the sort of discriminatory marketplace that I just described. But these same folks forget that there was no

tsunami of liability lawsuits against ISPs and websites when we wrote and passed Section 230. These same folks forget that there were only a handful of states and local taxes on Internet service and Internet commerce when we wrote and passed the Internet Tax Freedom Act.

I remember Mayors and Governors and County Commissioners arguing that we shouldn't limit their ability to tax the Internet because it wasn't a problem – yet. But it was clear what was coming down the road – thousands of discriminatory taxes laid one on top of another until Internet sales simply wouldn't be worth the cost of compliance. We must not let the Internet become the means by which state and local governments finance their budget shortfalls.

I don't fault the Telco's for pursuing their economic interests any more than I blamed a mayor or governor for trying to maximize tax revenue – each is serving their shareholders or constituents – but I will not allow them to pursue those interests at the cost of a free, vital and dynamic Internet.

Congress needs to make sure that Internet service providers are Americans' gateways to the Internet, not the gatekeeper that tells them where they can go and what they can do when they get there.

2 - *Get the balance right on IP protection.* Protection of Intellectual Property Rights cannot mean destroying the Integrity of the Internet or stifling speech. I've been very concerned about the methods used by federal law enforcement – in concert with the movie and record industries – to combat copyright infringement in the digital environment. The seizure of domains without due process and the vague standards for those seizures are creating an uncertainty that will stifle legitimate creative sites and services for years to come. I am opposing legislation that would open the door to more of these types of seizures and methods of frustrating users' ability to navigate to certain sites the government or the content industry doesn't like without full due process. But I need your help in educating the public and policy makers about dangerous proposals to enforce intellectual property rights in a way that has the collateral damage of breaking the Internet in places and weakening the value of the net as a whole.

3 - *Discriminatory taxes on digital goods and services.* Another challenge that is rearing its ugly head is the continued efforts of state and local governments who want to impose duplicative and discriminatory taxes on digital goods. Now, my wife may be the owner of the Strand Bookstore, but I've got to tell you that I'm as excited about e-books and new digital products as much as anyone. So I think that

Congress needs to deal with these discriminatory local taxes on digital goods in the same way that it dealt with taxes on Internet access and services. If we want to encourage innovation and ensure that consumers can get what they want and need across state and international lines, there needs to be protection from multiple and discriminatory taxation.

4 - *Digital Trade.* The norms and rules that we put into place here, in the United States, need to be expanded globally. As American tech companies have created and expanded overseas markets of digital goods and services, countries are erecting barriers to these American exports. China's efforts to frustrate Google and Vietnam's blocking of Facebook are 21st century versions of old school protectionism that must be stopped. So, as chair of the Senate Finance Subcommittee on Trade, I'm working to ensure that our trading partners are bound to enforceable commitments to allow the cross border movement of data.

And last, but not least, I'm working to ensure that foreign markets and networks are not more legally hazardous to Internet companies and individual users than our own part of the Internet. I'm doing this by making it a priority to export the principles we agreed to 15 years ago when we enacted into law Section 230. As history demonstrates, when we strengthen intermediary protections, we make the Internet more valuable and useful to each and every user. And when that happens, the world can change.